

ESTTA Tracking number: **ESTTA588266**

Filing date: **02/19/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	24/7 Distribution, LLC
Granted to Date of previous extension	02/19/2014
Address	8630 Belcastro Street Las Vegas, NV 89113 UNITED STATES
Correspondence information	Christopher McGeehan McGeehan Technology Law, Ltd. P.O. Box 810 Chicago, IL 60690-0810 UNITED STATES chris@newidealaw.com Phone:8722210970

Applicant Information

Application No	85871716	Publication date	10/22/2013
Opposition Filing Date	02/19/2014	Opposition Period Ends	02/19/2014
Applicant	Kahala Franchising, L.L.C. 9311 East Via de Ventura Scottsdale, AZ 85258 AZERBAIJAN		

Goods/Services Affected by Opposition


Class 033. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Rum


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85252745	Application Date	02/27/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SKULL		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2013/08/30 First Use In Commerce: 2013/08/30 Distilled Spirits

U.S. Registration No.	4080332	Application Date	08/02/2007
Registration Date	01/03/2012	Foreign Priority Date	NONE
Word Mark	CALAVERA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2011/08/01 First Use In Commerce: 2011/10/15 Alcoholic beverages, namely, tequila and prepared alcoholic cocktails		

Attachments	85252745#TMSN.jpeg(bytes) 77245380#TMSN.jpeg(bytes) SugarSkullOppositionSigned.pdf(116700 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/christopher j mcgeehan/
Name	Christopher McGeehan
Date	02/19/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

24-7 DISTRIBUTION, LLC,)	
)	
Opposer,)	
v.)	Opposition Number _____
)	
)	Mark: SUGAR SKULL
KAHALA FRANCHISING, L.L.C.,)	App. No: 85/871,716
)	
Applicant.)	

NOTICE OF OPPOSITION

24/7 Distribution, LLC, a Nevada Limited Liability Company having its principal place of business at 8630 Belcastro Street, Las Vegas, NV 89113 (hereinafter "Opposer"), believes that it will be damaged by registration of the mark shown in Application Serial No. 85/871,716 filed March 8, 2013, and hereby opposes same.

The application was published for opposition on October 22, 2013. Opposer timely requested a 90-day extension to oppose to February 19, 2014.

The grounds are as follows:

1. Application Serial No. 85/871,716 seeks registration of SUGAR SKULL for rum in International Class 33 (hereafter "Applicants' goods").
2. Application Serial No. 85/871,716 was filed on March 8, 2013 and is based on Applicants' alleged bona fide intention to use SUGAR SKULL in commerce pursuant to Section 1(b) of the Trademark Act. On information

and belief, Applicant made no use of the mark SUGAR SKULL prior to the filing of Application Serial No. 85/871,716.

3. Opposer is the exclusive licensee of U.S. Trademark Registration No. 4,080,332 for CALAVERA and U.S. Trademark Application No. 85/252,745 for SKULL, both of which are owned by John Robb.

4. On August 2, 2007, prior to the filing of Application Serial No. 85/871,716, Robb filed Application Serial No. 77/245,380 for the mark CALAVERA for alcoholic beverages, namely tequila and prepared alcoholic cocktails in International Class 33. This application issued as U.S. Trademark Registration No. 4,080,332 on January 3, 2012. Calavera is the Spanish translation for the English word “skull.”

5. The August 2, 2007 filing date of Opposer's licensor's Application Serial No. 77/245,380 constitutes the constructive date of first use of the mark. Opposer's licensor's constructive date of first use of the mark CALAVERA is prior to the filing date of Applicants' application and, therefore, is prior to the potential constructive date of first use of Applicants' mark SUGAR SKULL.

6. On February 27, 2011, prior to the filing of Application Serial No. 85/871,716, Robb filed Application Serial No. 85/252,745 for the mark SKULL for distilled spirits in International Class 33.

7. The June 21, 2010 filing date of Opposer's Licensor's Application Serial No. 85/252,745 constitutes the constructive date of first use of the mark, contingent on issuance of the registration. Opposer's Licensor's constructive date of first use of the mark SKULL is prior to the filing date of Applicants' application and, therefore, is prior to the potential constructive date of first use of Applicants' mark SUGAR SKULL.

8. Applicant's mark SUGAR SKULL incorporates Opposer's licensed mark SKULL in its entirety. Applicant's mark SUGAR SKULL also incorporates Opposer's licensed mark CALAVERA in its entirety under the doctrine of foreign equivalents.

9. Opposer's licensed goods and services are alcoholic beverages, namely tequila and prepared alcoholic cocktails [Registration No. 4,080,332] and distilled spirits [Application Serial No. 85/252,745]. (collectively "Opposer's Goods") Applicant's goods—rum—are identical or substantially similar goods to Opposer's goods and are or are likely to be offered through the same or overlapping channels of trade to the same or overlapping classes of purchasers and users so that purchasers, prospective purchasers, users and others are likely to be confused, mistaken or deceived into the belief, contrary to fact, that Applicant's goods sold under the mark SUGAR SKULL emanate from and/or are in some way sponsored or approved by Opposer or

are otherwise related to Opposer's goods and services sold under the marks SKULL and/or CALAVERA, thereby damaging Opposer.

10. Applicant is not lawfully entitled to the registration which they seek for the reason that the mark SUGAR SKULL, as used for the goods covered by Application Serial No. 85/871,716 so resembles Opposer's licensed marks SKULL and CALAVERA as to be likely to cause confusion, to cause mistake or to deceive within the meaning of § 2(d) of the Federal Trademark Act, thereby damaging Opposer.

11. Opposer submits this Notice of Opposition online with the \$300 fee and attaches its proof of service of this Opposition on Applicants.

WHEREFORE, Opposer prays that the present opposition be sustained and the registration of SUGAR SKULL sought by Applicant be refused.

Respectfully submitted,

24/7 Distribution, LLC



Christopher J. McGeehan
Attorney of Record, Illinois Bar member

February 19, 2014

Christopher J. McGeehan
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P.O. Box 810
Chicago, IL 60690-0810
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Proof of Service

I, Christopher J. McGeehan, attorney for the Opposer, hereby certify that I mailed a copy of this Notice of Opposition to the Correspondence Address noted for the Application being opposed in the USPTO's TARR system via first class mail addressed to the party below on February 19, 2014:

Renee Mitchell
Kahala Management, L.L.C.
9311 East Via de Ventura
Scottsdale, AZ 85258